

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Amendment of Parts 73 and 74 of the
Commission's Rules to Establish Rules for Digital
Low Power Television, Television Translator, and
Television Booster Stations and to Amend Rules
For Digital Class A Television Stations

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MB Docket No. 03-185

To: The Commission (*filed through ECFS*)

**COMMENTS OF CTB SPECTRUM SERVICES LLC
AND CTB SPECTRUM SERVICES FOUR LLC**

1. CTB Spectrum Services LLC and CTB Spectrum Services Four LLC (together "CTBSS")¹ hereby submit these comments on the Petition for Blanket Extension or Waiver filed in this proceeding by the Advanced Television Broadcasting Alliance ("ATBA Petition").² The Petition asks the Commission to extend the expiration date of all construction permits for new digital LPTV stations until September 1, 2015, the same uniform deadline that the Commission has already adopted for completion of construction under flash cut or companion channel permits held by analog LPTV licensees.³ CTB agrees that the construction deadline should be extended; but ATBA's suggested September 1, 2015, deadline is unrealistic for any LPTV operator to complete construction of new facilities. The deadline must be set no earlier than 18 months after completion of the anticipated re-packing of the spectrum assigned to full power and Class A

¹ These two entities have substantial ownership in common and were both created as part of the overall national plan for development of LPTV capabilities discussed at ¶ 2, *infra*.

² Comments were invited by the Commission by Public Notice, DA 14-996, released July 14, 2014.

³ See 47 CFR §74.788(c).

television stations. In addition, CTBSS believes that the construction deadline is only one of many issues facing the LPTV industry; and all of these issues, including the deadline, should be addressed in the rulemaking the Commission has promised in the near future dealing with LPTV issues.⁴

2. The two CTBSS entities are the licensees of 37 digital low power television (LPTV) stations, holders of 115 granted construction permits for unbuilt digital LPTV stations, and pending applicants for 55 more new digital LPTV stations. CTBSS filed applications for a large number of stations in 2009 and 2010, intending to construct a nationwide network of LPTV stations to provide innovative multichannel broadcast and ancillary services to the public. These services would be concentrated in rural areas and along major highways outside urban areas. The areas targeted by CTBSS are likely to be the last to obtain wireless services from large corporate providers, which normally focus capital investment first in densely populated urban areas. Significant amounts of time and money have been invested in both the application effort and in planning and implementing station construction. However, full implementation has been stymied, hopefully only temporarily, by the Commission's proposal in GEN Docket No. 12-68 to reduce substantially the amount of spectrum available for television broadcasting, the Commission's intent to disregard preservation of LPTV in its repacking software, and the Commission's reluctance to give television broadcasters the opportunity today to upgrade their technology to improve the efficiency of their use of the spectrum.

3. As a secondary service, LPTV runs the risk of displacement from its channels by new and modified full power television stations. The Commission has made that point clear many times in rules, orders, and public notices opening application filing windows. While CTB was

⁴ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, 29, FCC Rcd 6567, at ¶ 664 (2014).

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aware of the risk when it filed its applications, it evaluated that risk in an environment where 50 TV channels were available. The Commission now proposes to reduce that number to possibly as few as 30 channels – a 40% decrease. The risk of being displaced and having to move prematurely to a new channel, or not being able to find a new channel at all and thus being permanently silenced, was one thing in an environment of 50 channels, but it is a materially different calculation in an environment of only 30 channels. Whatever warnings the Commission may have issued in 2009 and before, they did not include loss of 40% of the TV spectrum – a proposal which was not explicitly advanced until enactment of the *Middle Class Tax Relief and Job Creation Act of 2012*, Pub. L. No. 112-96, §§ 6402, 6403, 125 Stat. 156, and release of the Commission’s *Notice of Proposed Rulemaking* in GEN Docket No. 12-68, 27 FCC Rcd 12357, both of which occurred almost three years after the 2009 LPTV filing window. Indeed, even today, the Commission’s repacking computer software has not been finalized, which, along with the fact that the amount of TV spectrum to be repurposed will depend on the results of the incentive auction, leaves LPTV permittees completely unable to predict the fate of any individual station, let alone their fate overall.

4. As much as CTBSS would like to deploy and operate its network now, as ATBA’s Petition discusses in detail, any rational investment approach dictates deferring construction until the fate of each station is known. It is difficult enough for small businesses to raise capital in general,⁵ let alone for a project that can go up in smoke based on circumstances outside the control of the investor. Each station should be constructed only once and have a reasonable life

⁵ The Commission recognized this problem when it hosted an Access to Capital Conference for Small Business last year. See <http://www.fcc.gov/events/access-capital-conference-small-businesses>.

expectancy thereafter, which means both surviving and not having to rebuild facilities in the short term on a different channel with possibly a different coverage area.

5. ATBA properly notes that the factors which led the Commission to prescribe a uniform, extended construction deadline for flash cut and companion digital channel permits apply equally or more so to permittees of new stations, because permittees of new stations often do not have an ongoing business to generate income to support amortization of construction costs. Any argument that permittees of new stations accepted the risk of investment loss when they filed their applications is undercut by the timetable discussed at Paragraph 3, *supra*.

6. CTBSS agrees with ATBA that it is highly inefficient for the Commission to rule on applications for extensions of time on a station-by-station basis. The Commission has already processed several hundred extension applications, most of which relied on the same factors discussed in ATBA's Petition and these Comments. Where many applicants face the same circumstances and request the same relief, a blanket extension or waiver of the deadline is far more efficient and economical both for the Commission and for permittees.

7. While CTBSS welcomes the relief requested by ATBA and encourages the Commission to act favorably, relief until only September 1, 2015, would not be realistically useful. The whole point is that a permittee must be able to anticipate at least the near-term fate of its station before investing in construction. Construction also takes time. To be realistic, at least 18 months, if not two years, should be allowed for construction after the repacking process has worked its way through to a final or near-final result. That will not happen until after the incentive auction at the earliest. The incentive auction is now not scheduled to start until mid-

2015.⁶ Thus the chances of anyone having enough concrete information to determine the fate of an LPTV station by September 1, 2015, are virtually *nil*.

8. Moreover, the construction deadline is only one of many issues facing the LPTV industry after the spectrum repack. CTBSS urges the Commission to commence the anticipated LPTV rulemaking promptly and hopes that the Commission will take a comprehensive look at the contributions of LPTV to our society and the many steps that need to be taken to preserve and to enhance the diversity, small business industry participation, and innovation that LPTV uniquely provides. Extending the construction deadline is only one part of the mix. Dealing with that deadline separately must not be allowed to end up as an excuse for neglecting other critical survival issues.

9. In sum, CTBSS supports ATBA's concept but asks the Commission to provide a realistic uniform deadline for construction of new stations, perhaps in mid-2017, and to address the deadline in the upcoming comprehensive LPTV rulemaking. A delay until 2017 should not be viewed as wasting or warehousing spectrum. Rather it should be viewed as a way to increase the chances of success for new stations by not forcing permittees to invest recklessly. The uncertainty faced by permittees is not of their own doing, and they should not be punished for it by forcing them to make unreasonably risky investments.

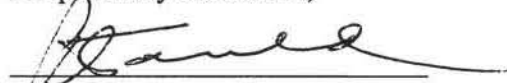
10. CTBSS is anxious to construct and operate its planned network of stations and believes that its plan will help to advance significantly the time when rural residents of our nation will be able to enjoy the same access to video information, entertainment, and data as urban residents. It asks the Commission to facilitate implementation of CTBSS' plan by providing adequate time for risk assessment and construction. And when the Commission

⁶ See *The Path to a Successful Incentive Auction*, Blog Post by Chairman Tom Wheeler, <http://www.fcc.gov/blog/path-successful-incentive-auction-0>.

undertakes its LPTV rulemaking, CTBSS also asks that it include quick removal of the government-imposed shackles which broadcasters now face by being confined to an outdated technical standard for their transmissions. Enormous increases in efficiency are possible with today's technology, with dramatic further improvements coming in the short-term future. As long as an LPTV station provides a free video program stream at no cost and without controls on reception to anyone who wants to receive it, the station should be allowed the same flexibility in technical standards that most non-broadcast transmission services already enjoy thanks to deregulation.⁷

August 14, 2014

Respectfully submitted,


Peter Tannenwald

Counsel for CTB Spectrum Services LLC
and CTB Spectrum Services Four LLC

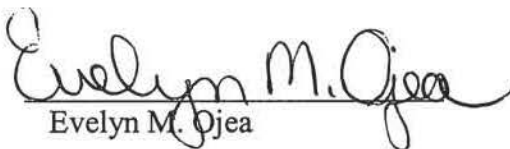
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⁷ The public will not be inconvenienced or shut out of broadcast services using new technologies, as reliance on broadcast tuners built into TV receivers is already almost a thing of the past. Cable and satellite set-top boxes, as well as Internet streaming devices like AppleTV and Roku, do not rely on the TV tuner, and receivers with HDMI inputs are ready to accept very low-cost dongles that can bring almost any digital standard to any digital receiver without any equipment replacement or cost to the consumer if service providers give away dongles, as they may well choose to do.

CERTIFICATE OF SERVICE

I, Evelyn M. Ojea, do hereby certify that I have, this 14th day of August, 2014, caused a copy of the foregoing "Comments of CTB Spectrum Services LLC and CTB Spectrum Services Four LLC" to be sent by first class United States mail, postage prepaid, to the following:

Advanced Television Broadcast Alliance
Attention: Louis Libin, Executive Director
382 Forest Ave.
Woodmere, NY 11598


Evelyn M. Ojea